

**TOWN OF DUCK  
PLANNING BOARD  
REGULAR MEETING  
October 14, 2009**

The Planning Board for the Town of Duck convened at the Duck Municipal Offices at 6:30 p.m. on Wednesday, October 14, 2009.

Present were Chairman Jon Britt, Vice Chair Joe Blakaitis, Ron Forlano, John Fricker and Don Kingston.

Absent: None.

Also present were Director of Community Development Andy Garman and Permit Coordinator Sandy Cady.

Others Present: Town Manager Christopher Layton, Fire Chief Donna Black and Jackie Orsulak.

Absent: Council Liaison Dave Wessel.

Chairman Britt called to order the Regular Meeting of the Planning Board for October 14, 2009 at 6:28 p.m. He noted that Council Liaison Wessel was absent.

**PUBLIC COMMENTS**

None.

**OLD BUSINESS**

**Discussion/Consideration of an Ordinance to Amend Town Code Section 156.071, Non-conforming Lots of Record**

Director Garman stated that at their September meeting, the Planning Board discussed in detail the issue of non-conforming lots of record ordinance. He noted that Vice Chair Blakaitis was not present for the meeting and the Board had decided to table the issue so a final discussion could be achieved with all Board members present. He stated that staff had provided the Board with seven (7) different options in order to revise the ordinance relative to lot coverage for lots less than 15,000 square feet. He stated that the Planning Board was leaning toward an option that would leave the ordinance as is except including a revision that would limit the total square feet of coverage for lots less than 15,000 square feet.

Director Garman stated that staff received a letter from Michael Milan, the president of South Snow Geese Homeowners Association with a plea to the Planning Board to revisit the lot coverage issue and consider one of the other options. He noted that the Board had the letter in front of them and staff could answer any questions the Board may have.

Chairman Britt stated that the Board had discussed the issue at length at their September meeting and came to a conclusion of discussing one (1) or two (2) of the options since going any further would cause more problems.

Vice Chair Blakaitis stated that he had concerns about doing anything that would mean taking something away from someone. He stated that he thought he knew what would be taken away from the other lot owners, but wasn't sure that the Board shouldn't consider one of the proposals that would modify the ordinance somewhat. He stated that he would be open to discussing Option 1 and 2 as well as the 4,500 square foot issue. He stated he would like to leave setbacks alone.

Chairman Britt stated that that Board had a month to think about the issue and if they felt differently, then it should be discussed.

Member Fricker stated that he was still where he was at the last meeting. He stated that he did not want to do any lot owner harm and felt if the Board made any changes, it would cause harm in large numbers. He thought it was one of the bases for the Planning Board to recommend denial of the ordinance change proposal by Snow Geese South at their May 2009 meeting. He thought it was expressly set forth in the handout that Director Garman gave to Council that the Planning Board did not want to expand something because of an issue with the Snow Geese subdivisions.

Member Fricker stated he was opposed to increasing the number of nonconforming lots that were less than 15,000 square feet. He stated that he reviewed the minutes of the September 9, 2009 meeting and noted that findings of consistency with the Land Use Plan would have to be made by the Board with any recommended change. He thought it would be difficult to make the findings of consistency with the Land Use Plan regardless of how the Board changed the ordinance. He stated that he did not think the Board was willing to allow an increase in density. He reiterated that he did not want to do anything and would vote against anything other than the status quo.

Member Forlano agreed with Member Fricker's comments. He stated that the reason he brought up the thirty-five percent (35%) was if the Board gave to one they would have to give to all. He stated he would also vote against any change except for the status quo.

Member Kingston stated that his position remained the same, which was the concern over density and fairness. He stated he would still like to see a cap on the coverage to deal with fairness and density.

Vice Chair Blakaitis asked about lots over forty percent (40%) lot coverage. Director Garman stated that there weren't many lots that were over forty percent (40%) due to other things that were self-restricting, such as the septic system. He noted that one hundred seventy-nine (179) lots would receive more than 4,500 square feet with the way the ordinance currently exists.

Member Forlano asked if the Board did nothing, there was a way to get around making lot owners take things out such as concrete in the future. He felt it was an onerous situation to put

on lot owners. Director Garman stated the only way to get around it was to go above thirty percent (30%) lot coverage.

Chairman Britt thought the general agreement with the Planning Board was to do nothing except for Member Kingston's concern at looking at the maximum square foot issue. He asked the Board for their thoughts and thought it could be justified from a Land Use and density standpoint.

Member Fricker stated that the problem he had with it was that the Board would be changing the rules after people have bought property with the expectation that they would be afforded a certain percentage of lot coverage to build on. He thought the argument could be made that the Board should change it all back to thirty percent (30%) coverage. He stated that he did not think the Board should be arbitrarily changing the rules.

Vice Chair Blakaitis stated that he liked the limitation on square footage but it would still make a change against other homeowners.

Chairman Britt agreed with the Board and thought the ordinance should be left as is.

Member Fricker moved to recommend to Town Council that no amendment to the existing ordinance be made. Member Kingston seconded.

Motion carried 5-0.

### **Town of Duck Hazard Mitigation Planning Committee Meeting**

Director Garman stated that the Board had in their packets information that would be discussed on the issue. He stated that there were new goals and objectives regarding urban interface and wild land fires. He stated that under the Action Plan was the new goal related to the fires and how the Town of Duck would be a fire wise community.

Fire Chief Donna Black was recognized to speak. Fire Chief Black went on to review what a fire wise community was to the Board and audience.

Director Garman noted that the strategy for the Hazard Mitigation was an ongoing one. Fire Chief Black stated that due to the number of brush fires, she would recommend a medium concern.

Member Kingston asked if grills at rental homes were the cause of brush fires. Fire Chief Black stated that they were amongst other things.

Member Forlano asked for clarification on how to mitigate a brush fire that would endanger a house. Fire Chief Black stated that it would mean clearing brush around the house. Member Forlano asked how the education would be done. Fire Chief Black stated it would be done through the Fire Department's website as well as brochures, working with landscapers and the various homeowner associations.

Director Garman reviewed the Hazard Mitigation Plan with the Planning Board and audience. He stated that he hoped to submit a draft of the Plan to Dare County within the next few weeks. He added that he will bring it back to the Board before it goes before the Town Council.

## **NEW BUSINESS**

### **Items for Town Council Referral**

Director Garman noted that the items were ones that the Board had discussed previously and had put on their list of things to review at a later meeting. He thought the Board was clear on the issues.

### **Loss of Non-conforming Status of Signs – Appraised Value versus Replacement Value**

Director Garman stated that the issue was discussed previously. He stated that there was a real issue as to who could be determining the appraised value of signs as it was not something that was commonly done. He stated that the suggested idea was to discuss replacement value when an owner has loss of nonconforming status versus the appraised value.

### **Specific Penalties for Tree and Vegetation Management Ordinance Violations**

Director Garman noted that staff issues notices of violations if a homeowner does something that goes against the ordinance. He added that staff can't specify mitigation activity. He stated that it was a unique situation as staff needs to have some sort of immediate penalty for it to be an effective enforcement. He stated that it was suggested that the Board look at other ways to deal with the violation of the ordinance.

Vice Chair Blakaitis moved to send these two items to Council for consideration and referral back to the Board (boomerang effect). Member Fricker seconded. Motion carried 5-0.

## **APPROVAL OF MINUTES**

### **Planning Board Meeting September 9, 2009**

Chairman Britt directed the Board to review the minutes from the September 9, 2009 meeting. Member Fricker had changes to Page 3 and 5 of the minutes.

Member Fricker moved to approve the minutes as amended. Member Kingston seconded.

Motion carried 4-0. Vice Chair Blakaitis could not vote on the motion since he was not present for the meeting.

## **OTHER BUSINESS**

None.

## **STAFF COMMENTS**

**FYI - 2009 North Carolina Planning and Zoning Law Legislative Changes; Executive Summary – A Study of the Feasibility of Wind Turbines in the Pamlico and Albemarle Sounds and in Ocean Waters off the North Carolina Coast; and Hazard Mitigation Planning Article – September Issue *Planning Magazine***

Director Garman stated that the items would affect the Town from an administrative standpoint. He noted that the legislature had passed a moratorium on the expiration of permits between January 1, 2008 and December 31, 2010. He added that if someone had a permit that expired in January 2008, it would now be “brought back to life” until December 31, 2010.

Director Garman stated that the energy efficiency item was interesting and something the Board could discuss at the future meeting with the Town Council.

Director Garman stated that the Hazard Mitigation Planning article was for the Board to read at their leisure.

**BOARD COMMENTS**

Member Forlano asked if there was an update on the Duck News Café. Director Garman stated that Ralph Calfee obtained a Special Exception permit and submitted a site plan application. He stated that he submitted a list of comments to Mr. Calfee, and back in September a revised site plan was dropped off. He stated that he would be calling Mr. Calfee with a few more changes and expected to issue site plan approval afterward. He stated that Mr. Calfee could then apply for a building permit but would need Health Department approval.

Member Fricker stated that the Board should extend their condolences to Monica Thibodeau and her family. Vice Chair Blakaitis asked that the Board be informed of any funeral arrangements.

**ADJOURNMENT**

Chairman Britt moved to adjourn the meeting.

Motion carried 5-0.

The time was 8:15 p.m.

Approved: \_\_\_\_\_  
/s/ Jon Britt, Chairman